

NOT TO BE INCLUDED  
IN BOUND VOLUMES

PMH  
Orlando, FL

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DOLLAR THRIFTY AUTOMOTIVE GROUP, INC.

Employer

and

Case 12-RC-143409

UNITED SERVICE WORKERS UNION, LOCAL 74,  
IUJAT

Petitioner

DECISION AND CERTIFICATION OF REPRESENTATIVE

The National Labor Relations Board, by a three-member panel, has considered objections to an election held on January 29, 2015, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 27 for and 22 against the Petitioner, with no void or challenged ballots.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the hearing officer's findings<sup>1</sup> and recommendations,<sup>2</sup> and finds that a certification of representative should be issued.

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<sup>1</sup> The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We have carefully examined the record and find no basis for reversing the findings.

## CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for the United Service Workers Union, Local 74, IUJAT, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

Included: All full-time and regular part-time Dollar Thrifty rental sales agents (RSAs), RSA leads, and cashiers, employed by the Employer at its DTG Orlando Airport location located at 9118 Jeff Fuqua Blvd., Orlando, FL 32827.

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We do not rely on the hearing officer's adverse inference rulings. In addition, we do not pass on the Employer's exceptions to the hearing officer's exclusion of certain text messages on hearsay grounds. Even if considered, this evidence would be insufficient to establish objectionable conduct.

Member Miscimarra joins his colleagues in not relying on the adverse inference drawn by the hearing officer. He believes the hearing officer erred in drawing an adverse inference from the Employer's failure to call Location Manager Brady Warner. An adverse inference may be drawn when a party fails to call a witness who may reasonably be assumed to be favorably disposed to the party regarding any factual question on which the witness is likely to have knowledge. See, e.g., *International Automated Machines*, 285 NLRB 1122, 1123 (1987), *enfd.* 861 F.2d 720 (6<sup>th</sup> Cir. 1988). It is not reasonable to assume that Warner was favorably disposed towards the Employer, considering that the Employer had suspended him at the time of the hearing. Member Miscimarra further believes that the hearing officer erred in rejecting as hearsay text messages sent by Warner to employee Abdel "Todd" Bendahou. Hearsay evidence is admissible in Board proceedings. See *RJR Communications, Inc.*, 248 NLRB 920, 921 (1980). Moreover, the hearing officer admitted the evidence at the hearing over the Petitioner's objection, and then sua sponte reversed his ruling after the hearing was closed. This procedure deprived the Employer of the opportunity to present the evidence by other means. For these reasons, Member Miscimarra would reverse the hearing officer's post-hearing evidentiary ruling. Even considering this evidence, and even absent the adverse inference discussed above, however, Member Miscimarra agrees with his colleagues that the Employer has established, at most, that Warner engaged in objectionable conduct affecting one employee, and he joins in overruling the objections on that basis.

<sup>2</sup> We adopt the hearing officer's recommendation to overrule the Employer's objections solely on the ground that we find that the evidence shows, at most, that Location Manager Brady Warner engaged in objectionable conduct affecting one employee (Ali Khalil), which is insufficient to affect the results of the election. There are no exceptions to the hearing officer's findings that Warner did not solicit authorization cards or encourage the filing of the representation petition.

Excluded: All clerks, clerk leads, lot attendants, express agents, Instant return representatives, office clerical employees, administrative employees, confidential employees, security representatives, professional employees, managers, all other employees, and guards as defined in the Act.

Dated, Washington, D.C., January 28, 2016.

_____ Mark Gaston Pearce,	Chairman
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_____ Philip A. Miscimarra,	Member
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_____ Kent Y. Hirozawa,	Member
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(SEAL)

NATIONAL LABOR RELATIONS BOARD